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INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE:

VIOLENCE AGAINST WOMEN

Written statement submitted by the International Human Rights Law Group, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 February 1999]

GE.99-11200 (E)

1. The International Human Rights Law Group welcomes the June 1998 mission of the Special Rapporteur on violence against women, its causes and consequences, to the United States of America. As a human rights organization based in the United States, the Law Group considers this mission of the Special Rapporteur to be critically important in reaffirming the basic principle that human rights are universal in their applicability, that impartiality must guide all United Nations human rights activities, and that no country is exempt from international scrutiny under internationally accepted human rights standards.

2. The International Human Rights Law Group was pleased to support the visit of the Special Rapporteur on violence against women and was especially pleased that the Special Rapporteur chose to examine the conditions of women in custody. In particular, it was important to disseminate information concerning the mandate and the work of the Special Rapporteur to the many representatives of non-governmental organizations (NGOs) who are working for women's human rights in the United States, many of whom have never had an opportunity to raise their concerns about the treatment of women in custody to United Nations human rights experts. A major concern of the Law Group and other NGOs is that the United States, by failing to ratify the Convention on the Elimination of All Forms of Discrimination against Women, and by taking reservations to key international human rights treaties, such as the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, has in effect shielded its human rights violations from international scrutiny as well as from direct legal action by aggrieved parties in the United States.

3. The Law Group welcomes the attention of the Special Rapporteur on violence against women to the issue of women in custodial confinement in the United States. In the United States, there are federal prisons which are administered by the federal Government, and State prisons which while administered by individual States remain under the authority of superseding federal law, including constitutional law and human rights law. There are also local facilities (or jails) primarily for certain inmates serving relatively short sentences. A collective term for federal and State prisons and local jails is "correccional facilities".

4. The United States is second only to Russia, among developed nations, in the incarceration of its citizens. It is also a well-established fact that in the United States, incarceration disproportionately affects racial and ethnic minorities. While African-Americans make up only 12 per cent of the overall population, they comprise over 50 per cent of those who are incarcerated. Increasingly, the burden of incarcerution is falling heavily on women - primarily African-American and Hispanic women. Numerous studies, including those conducted by the United States Government, have shown that African-American women are eight times more likely than white women to be incarcerated, while Hispanic women are twice as likely as white women to be incarcerated. In 1996, the female prison population growth in the United States was double that of males. Most women who are incarcerated in the United States have been convicted of non-violent economic offences such as fraud, embezzlement and, increasingly, drug offences. Between 1990 and 1996, drug offenders accounted for 45 per cent of the growth in the female prison population. One third of female inmates in State prisons are incarcerated for drug offences, and in federal prisons, a staggering three fourths of female inmates are incarcerated for drug offences.

5. This increase in the incarceration of women in the United States has had devastating impacts, particularly in the African-American and Hispanic communities. First, the disproportionately high rates of incarceration have fragmented already fragile families. Eighty per cent of women in prison are mothers and almost 70 per cent had custody of minor children prior to their incarceration. Approximately 10 per cent of women who give birth while in custody are separated from their newborns at birth in all but a few States. Visitation with children is also impeded by the great distance families must travel to visit women inmates. Many States have only one correctional facility for women; thus, women are often incarcerated far from their homes and families.

6. Second, women incarcerated in the United States are often denied access to adequate medical care, particularly obstetrical and gynaecological care. Litigation across the country in federal and State courts has proven allegations of women inmates receiving little or no prenatal care, women inmates having to give birth while in shackles, and women inmates being denied basic medical care that would have either prevented or relieved unnecessary pain or, in many cases, saved their lives.

7. Third, it has also been well documented in legal challenges, investigative reports, and by other sources of credible information that both federal and State prisons have failed to protect women in their custody from sexual violence and abuse. There are hundreds of reported incidents of sexual misconduct by correctional staff against women in their protection. These incidents have ranged from rape to coerced sex and sex in exchange for highly valued items in prison such as food, work opportunities, telephone privileges, or drugs. Sexual misconduct by correctional staff has devastating effects on women inmates, particularly those who already have histories of serious trauma and abuse. As a result of a widespread and institutional failure to provide adequate security and safety, many women have become impregnated while in custody both by correctional staff and by inmates. While most States and the federal government now have laws making such conduct illegal, these laws are rarely enforced. Fifteen States (Alabama, Kentucky, Virginia, Massachusetts, Washington, Minnesota, Missouri, Montana, Nebraska, Oregon, Pennsylvania, Utah, Vermont, West Virginia and Wisconsin) still have no laws prohibiting sexual contact between staff and inmates, while other States provide for only misdemeanour sanctions for the conduct. Most troubling, many States recognize "consensual" sex among staff and inmates by providing for either lesser penalties or no penalties for such conduct.

8. The mission of the Special Rapporteur on violence against women to the United States has already brought needed attention to this matter, but fundamental changes must occur to remedy the problems and human rights violations identified above. The United States has an affirmative obligation to respect, protect and fulfil the human rights of all persons, including those in custody, and this obligation flows to each State and to all agents of the United States Government, including authorities and staff of federal and State correctional facilities.

9. The United States should adopt policies that recognize and support the integrity of the families of women who are incarcerated in both federal and State prisons. For example, in 1994, the Family Unity Demonstration Project was passed by Congress as part of the Violence against Women Act. Funds have

never been appropriated to establish this project which would provide community-based correctional facilities for non-violent offenders who are primary caretaker parents of children under six years of age. Programmes such as the Family Unity Demonstration Project are not only cost effective but they prevent the further fracturing of the family caused by incarceration.

10. The United States must affirm that as a matter of both domestic and international law, incarcerated women have the right to appropriate and adequate medical care. Such women also have the right to their bodily integrity and their dignity as human beings, and should not be shackled or restrained during childbirth. Moreover, correctional staff should not use physical restraints against women during their third trimester of pregnancy and should develop model standards and protocols for both medical and security issues related to women in general, and pregnant women in particular.

11. The United States must prevent and redress sexual violence and abuse in prison. Sexual misconduct by correctional staff in State and federal prisons constitutes a human rights violation and failure of the United States to investigate, prosecute and remedy such misconduct is a continuation of the violation. The United States should require as a condition of receipt of federal prison construction funds that States enact laws prohibiting sexual abuse of prisoners. These laws should recognize the inapplicability of consent in a penal setting. Such laws should also provide funds for investigation and prosecution of alleged incidents of abuse. The United States should also appropriate funds for the development, testing and evaluation of training programmes for both correctional staff and prison inmates on the issue of sexual misconduct, including prevalence, consequences, prevention, penalties and remedies for such conduct.

12. The United States should develop recommendations regarding cross-gender supervision of women in custody. The United States, unlike most other countries, allows cross-gender supervision in correctional settings. There may be instances, however, where such supervision endangers the mental and physical health of women in custody, particularly those with histories of serious trauma and abuse. The United States should reconcile its interests in equal employment opportunities with its obligations to uphold the human rights of those in custody.

13. The United States should take steps to ensure that women in custody receive a range of rehabilitation opportunities during their incarceration, including educational and vocational programmes, counselling and support services, and treatment for substance abuse. Such programmes and services will help women reintegrate into society upon completing their sentences and will make their confinement more productive and humane. The United States should also consider alternatives to incarceration for non-violent offenders, especially those who are primary caretakers of children. In particular, the United States must re-evaluate federal and State legislative provisions for mandatory minimum sentencing of non-violent drug offenders. These provisions often result in excessive, unjust penalties and disproportionately affect women and members of racial and ethnic minority groups.